IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 187 OF 2006

Catholic Syrian Bank Ltd. ..Petitioner

Vs.

The State of Maharashtra and ors. ..Respondents

Ms. Usha Srivastava i/by M/s. Consulta Juris for petitioner.

Mr. D.R. More, APP for State.

Ms. Deepa Pohuja i/by Mr. Vishal Thadhani for respondent no.3.

Mr. Vijay V. Nene for respondent nos.5 and 6.

CORAM: B.H. MARLAPALLE, J.

Date : September 11, 2007.

P.C.:

1. Heard the learned counsel for the petitioner.

An application filed under Section 457 of Cr.P.C. for return of property in C.C. No.120/N/2002 came to be allowed by the learned Metropolitan Magistrate, In-charge, 19th Court, Esplanade, Mumbai on 10/12/2002. This order came to be challenged in Criminal Revision Application No. 110 of 2003 by the present petitioner, who is original respondent no.5

and the. said Revision Application came to be dismissed by the learned Additional Sessions Judge, Gr. Mumbai.

2. It is clear from the order passed by the trial court that the State of Maharashtra - respondent no.1 through GB CB CID, Mumbai, respondent no.2 - Shri Rudra Finance Limited and respondent no.3 - Yasmin Bharat Thakker, Managing Director of Shri Rudra Finance Ltd. had given their no objection to return the muddemal property i.e. 39000 shares to the applicant-org. complainant. At the same time respondent no.4 - R. Gopal, original accused in C.R. No.117 of 2001 could not be served with the notice as he was not traceable and it was only respondent no.5 - the present petitioner who had objected to the return of the said muddemal property to the applicant.

3. Case of the applicant was that as per the agreement executed between it and respondent no.2 - Shri Rudra Finance Ltd., applicant no.2 agreed to transfer and pledge in favour of Shri Rudra Finance Ltd. the shares of Agee Gold Refineries Ltd. against which respondent no.2 was supposed to give

intercorporate deposit of Rs.75,00,000/- to applicant no.1. Accordingly, applicant no.2 executed three transfer advices for the transfer of 39000 shares of Agee Gold Refineries Ltd. in the name of Shri Rudra Finance Ltd. by way of pledge and the said shares came to be transferred in the Demat Account of Shri Rudra Finance Ltd. with Global Trust Bank Ltd., Fort Branch, Mumbai. However, Shri Rudra Finance Ltd. instead of advancing Rs.75,00,000/- by way of intercorporate deposit, issued a cheque on the ground that the market price of the said shares had fallen and the cheque got bounced. Subsequently, it was revealed that Shri Rudra Finance Ltd. had transferred the shares in favour of the third party and as per the agreement, the shares were not to be transferred or sold in any manner whatsoever unless there was a default in the repayment against the said intercorporate deposit. On this ground an F.I.R. came to be lodged with respondent no.1 and pursuant to the same respondent nos.3 & 4 came to be arrested. It was subsequently revealed that these 39000 shares of Agee Gold Refineries Ltd. were in the Demat Account of the petitioner-bank with M/s. Stock Holding Corporation.

4. The trial court has passed a conditional order directing respondent no.1 - State of Maharashtra to defreeze the 39000 shares lying frozen in the Demat Account of the present petitioner and the petitioner has been directed to return the said shares to the applicant no.2. In turn, the applicant has been directed to execute bond in the sum of Rs.25,00,000/- with a further condition that the applicant shall produce those shares before the Court as and when directed. Obviously, this order passed by the learned Metropolitan Magistrate is not in any way adverse to the interest of the petitioner-bank and the conditional order passed by the trial court fairly protects the interest of the adversary, if any. It is also clear that as the shares have been directed to be produced as and when required, they cannot be transferred to a third party without the leave of the court. The learned Additional Sessions Judge has considered the scope of Section 457 of Cr.P.C. as well as the powers of the police under Section 102 of Cr.P.C. and noted that the shares were pledged only by way of security and on the request of the applicant no.1. The concurrent view taken by both the courts

below cannot be termed as perverse or grossly erroneous so as to cause interference under Article 227 of the Constitution.

5. Hence, the petition is rejected summarily.

(B.H. Marlapalle,J.)